

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs,

V.

EBAY INC., et al.,

Defendants.

Civil Action No. 21-CV-11181-PBS

Leave to File Granted

March 20, 2023

**ORAL ARGUMENT
REQUESTED**

**DEFENDANT EBAY INC.'S PARTIAL MOTION
TO DISMISS THE AMENDED COMPLAINT**

Defendant eBay Inc. (“eBay”) hereby moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss, in part, the amended complaint (“Complaint”) filed in this action. As grounds for this motion, eBay states as follows:

1. Many of the claims in the Complaint are not legally viable, either because the Complaint's allegations fail to establish essential elements of the claims or because the claims are not available under Massachusetts law. Specifically:

- the negligent hiring, supervision, and retention claims (Counts V, VI, and VII) fail because the Complaint does not allege facts establishing that it was foreseeable that any of the individual defendants would commit the alleged acts;
- the assault claim (Count VIII) fails because it does not allege that any defendant was ever in a position to make immediate physical contact with Plaintiffs;
- the false imprisonment claim (Count XII) fails because it does not adequately allege that Plaintiffs were confined or that any defendants intended to confine them;

- the California-law stalking claim (Count II) fails because Massachusetts law applies here and does not provide an independent cause of action for stalking;
- the civil conspiracy claim (Count XIII) fails because as a matter of law eBay cannot conspire with its own agents and because Plaintiffs' allegations establish neither concert of action nor substantial assistance between eBay and the non-agent defendants; and
- the ratification claim (Count XIV) fails because Plaintiffs' allegations do not support a reasonable inference that eBay ratified the other defendants' conduct, particularly given that the Complaint acknowledges that within weeks of discovering the conduct, eBay had terminated six involved employees.

2. The grounds for this motion are set forth further in eBay's accompanying memorandum of law, which eBay references and incorporates fully herein.

WHEREFORE, Defendant eBay respectfully requests that the Court dismiss Counts II, V, VI, VII, VIII, XII, XIII, and XIV of the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), eBay respectfully requests oral argument in connection with this Partial Motion to Dismiss. The motion raises significant questions about whether the Complaint has adequately stated certain claims upon which relief can be granted. Oral argument will allow the parties to address this issue fully and to respond to any questions the Court may have.

Dated: April 21, 2023

/s/ Jack W. Pirozzolo
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Counsel for eBay Inc.

CERTIFICATION PURSUANT TO L.R. 7.1(a)(2)

I, Jack. W. Pirozzolo, counsel for eBay, hereby certify that, in accordance with Local Rule 7.1(a)(2), I have conferred with counsel for Plaintiffs and have attempted in good faith to resolve or narrow the issues subject to this Motion. Plaintiff's counsel stated she does not assent to this Motion.

Dated: April 21, 2023

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2023 this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: April 21, 2023

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo